

MEMORANDUM FOR ALL MAJOR SUBORDINATE COMMANDS AND
DISTRICT COMMANDS

SUBJECT: Policy Guidance Letter No. 33, Protection of Recreational Uses at Civil Works Projects

1. References:

- a. Water Resources Development Act of 1990, Sec 313
- b. ER 1105-2-100, Planning Guidance
- c. ER 1130-2-417, Major Rehabilitation Program and Dam Safety Assurance Program
- d. ER 1130-2-439, Protection of Public Health and Safety at Jetties, Groins, and Breakwaters

2. Background: A project may have been constructed to serve only one purpose, but over the years, recreational use of the structures may have evolved. As the project ages, maintenance, repair, rehabilitation or reconstruction may become necessary. The cost effective method of rehabilitation may result in a structure unsuited to the recreation which has evolved.

3. Section 313 of the Water Resources Development Act of 1990 provides that any maintenance, repair, rehabilitation, or reconstruction which results in a change in configuration of a structure should be carried out in a manner which, to the maximum extent practicable, will not adversely affect any existing recreational use even if the recreational use was not an authorized purpose. If the recreational uses are adversely impacted they may be restored or alternatives provided for comparable recreational use. Costs incurred shall be allocated to recreation and shall be payable by the beneficiaries of the recreation. The provision allows for mitigation for recreation use lost due to maintenance, repair, rehabilitation, or reconstruction initiated after 1 May 1988. No more than \$2,000,000 may be expended in any fiscal year to carry out the mitigation provision, which terminates in November 1995.

4. Guidance: For work proposed under the Major Rehabilitation Program, the rehabilitation report required by reference 1.c. should contain a discussion of any recreation use associated with the project structures and impact of the proposed work. If recreation use would be lost, alternative plans to accommodate the recreation may be considered. If the recreation benefits are greater than the added costs, and there is a local sponsor willing to provide the required cost sharing, provision for the recreation use may be recommended as a part of the rehabilitation to be undertaken. The report will be forwarded to HQUSACE for review and approval, and will include a letter of intent from a local sponsor, a financing plan, and a draft Local Cooperation Agreement (LCA). The LCA will be prepared for signature of the Assistant Secretary of the Army (Civil Works). If a sponsor is unwilling to provide the required local cooperation, the rehab report should be submitted recommending the most economical rehabilitation without the

provision for recreation. The required analysis will be funded as a part of the Major Rehab Program.

5. For recurring maintenance work, submission of the report required by reference 1.c. is not normally required. If recreation use associated with the project structures would be impacted by the proposed work, submit a letter report which provides the required information concerning the recreation use. The report should be accompanied by a letter of intent from a local sponsor, a financing plan and a draft LCA. The letter report should be prepared with O&N General funds and submitted for review and approval to CECW-O.

6. Cost Sharing: The added cost of modifying the design for maintenance, repair, rehabilitation or reconstruction, or for alternative provision of recreation facilities, will be allocated to recreation and will be cost shared in accordance with Section 103 of the Water Resources Development Act of 1986, which requires the sponsor to pay 50 percent of the separable cost allocated to recreation, and to pay the cost of operation, maintenance, repair, replacement and rehabilitation of the recreation facilities. A Local Cooperation Agreement will be required containing the standard requirements for recreation cost sharing and responsibilities. The LCA and financing plan will be reviewed by CECW-LM and submitted to the ASA(CW) for approval.

7. Mitigation: If a potential sponsor at a project for which maintenance, repair, rehabilitation or reconstruction was initiated since 1 May 1988, requests mitigation for recreation use lost, the district will submit to CECW-O, a written request to undertake a study. The request will describe briefly the extent of the proposed analysis and, if known, the extent of effort which may be required, as well as the cost of the analysis. The analysis should not exceed a cost of \$10,000.

8. If approved by HQUSACE, an analysis will be undertaken to determine whether the maintenance, repair, rehabilitation, or reconstruction caused a loss of recreation use. If a plan to mitigate the loss of recreation use is economically justified and supported by a sponsor who is willing to provide the required cost sharing, it may be recommended for undertaking as a new start under this authority. A report, including a financing plan and Local Cooperation Agreement, will be submitted to CECW-O for review and approval by the Assistant Secretary of the Army (Civil Works). Costs for work undertaken for such mitigation will be funded from O&N General, and will be monitored at HQUSACE to ensure that expenditures are within the limit of \$2,000,000 per year.

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Director of Civil Works

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